IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 173 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?No

2 To be referred to the Reporter or not ?No

3 Whether their Lordships wish to see the fair copy of the judgment ?No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?No

5 Whether it is to be circulated to the civil judge ?No

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
MAHESHBHAI MANIBHAI PATEL & 3 - Defendant(s)

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Appearance :
MR MD PANDYA for Appellant(s) : 1,
MR SUNIL K SHAH for Defendant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 11/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the award

dated 07th July, 1987, passed by the Motor Accident Claims Tribunal, Kheda at Nadiad in M.A.C.P. No.629 of 1983, by which the Tribunal awarded compensation of Rs.2,71,200/- with 9% interest along with proportionate costs on account of death of Premilaben, aged about 37 years, wife of respondent No.1 and mother of respondents No.2 and 3 herein. The deceased was possessing qualification of B.Sc., B.Ed. and was serving as a Teacher in the High School at Borsad.

2. The Tribunal passed the award against the driver of S.T. bus involved in the accident and therefore also against the appellant Corporation. Since the deceased was travelling as a passenger in the bus and the finding given by the Tribunal that the bus was being rashly and negligently driven by the bus driver on 14.7.1983 is not capable of being challenged in the facts and circumstances of the case, no discussion is required to be made on that score.

3. Coming to the question of quantum of compensation, the deceased was serving as a Teacher

and was receiving monthly salary Rs.1,266/- in the pay-scale of Rs.440-750 in June 1983. If the deceased had not expired she would have continued in service for another twenty years i.e. till 1.11.2003 and would have earned pension after retirement. The claimants i.e. husband and minor children of the deceased also averred that the deceased was giving tuition and was earning Rs.750/- per month. The claimants also relied on the certificate issued by Principal Mr.J.D.Patel at Exh.133 stating that the deceased was earning Rs.300/- per month from tuition. The salary certificate at Exh.48 certified that the deceased was receiving total emoluments Rs.1266/- per month.

4. The Tribunal assessed the salary income of the deceased as a school teacher at Rs.1500/- per month by taking into consideration the possibility of increase in the salary in future. The Tribunal also added Rs.300/- per month as tuition fee, and thus assessed Rs.1800/- per month as monthly income of the deceased. The Tribunal deducted 1/3rd amount as the expenditure which the deceased would have

incurred on herself and assessed the loss of dependency benefit at Rs.1200/- per month i.e. Rs.14,400/- per annum. The Tribunal applied the multiplier of 18 and, therefore, the compensation under the head of compensation for loss of dependency benefit worked out at Rs.2,59,200/-. The Tribunal also awarded Rs.12,000/- in the aggregate for loss to the estate and funeral expenses, making it a total compensation of Rs.2,71,200/-.

5. Mr.Pandya, learned advocate for the S.T.Corporation has vehemently submitted that a school teacher is not supposed to do private tuitions and that otherwise the claimants have not produced any evidence to show as to whom the deceased was giving tuitions, and that no evidence was also produced to show that the deceased was earning Rs.300/- per month by way of tuition fees.

6. Apart from the fact that there is nothing on record to show that the teachers serving in the concerned school were prohibited from giving tuitions, even if we were to ignore the tuition

income of the deceased, the fact remains that the total salary of the deceased at the time of her death in July 1983 was Rs.1,266/- per month in the scale of Rs.440-750. The certificate dated 6.7.1988 at Exh.128 (page 196 of the Record and Proceedings), issued by Head Master Mr.J.D.Patel, Borsad, indicated that, if the deceased had survived, her salary in June 1997 would have been Rs.1,905/-. The Court can also take judicial notice of revision of pay-scales of school teachers made in 1986 and also in 1996. As per the settled legal position, the Tribunal may, while assessing compensation for loss of dependency benefit in future take into account the potential future earning capacity and pay revisions (New India Ins. Co. vs. Kala Devi 1996 ACJ 16). For assessing future income on that basis also, since the deceased would have attained the age of superannuation in 2003, at the most conservative estimate also Rs.2,100/- per month can be easily taken as the salary of the deceased. For the purpose of assessing loss of future dependency benefit, if 1/3rd of the said amount is deducted, the dependency benefit would be Rs.1,400/- per month i.e. Rs.16,800/- per annum.

7. Mr.Pandya for the Corporation has submitted that, the multiplier of 18 applied by the Tribunal is on the higher side, because the deceased was aged 37 years, and therefore even as per the multiplier indicated in the Second Schedule of the Motor Vehicles Act, the multiplier cannot be higher than 16.

8. Assuming that the multiplier of 18 is on the higher side, we find that the Tribunal had assessed the loss of dependency benefit at only Rs.14,400/- and applied the multiplier of 18, but as per the calculations made earlier, the loss of annual dependency benefit is worked out at Rs.16,800/-. Applying the multiplier of 16 also, the loss of dependency benefit would not be less than at Rs.2,59,200/-. In view of the above discussion, even if one were to reduce the multiplier from 18 to 16, the compensation awarded does not merit any reduction.

9. In view of the above discussion, we do not find

any merit in the appeal. The appeal is, therefore, dismissed.

(M.S. Shah, J.) (K.M. Mehta, J.)

syed/